

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

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In the Matter of:

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Amendment of Section 73.202(b),
 Table of Allotments,
 FM Broadcast Stations,
 (Talladega and Munford, Alabama)

MB Docket No. 04-19
 RM - 10845

**REPLY COMMENTS
 OF
 JACOBS BROADCAST GROUP, INC.**

Jacobs Broadcast Group, Inc. ("Jacobs"), by Counsel, pursuant to the *Notice of Proposed Rule Making (DA 04-230, released February 6, 2004) ("NPRM")*, hereby respectfully submits this reply to the "Comments of Calhoun Communications" that were submitted in this proceeding on March 29, 2004. As will be shown below, the Commission must reject the comments of Calhoun Communications ("Calhoun") for a variety of reasons. In support hereof, Jacobs submits the following:

Preliminary Statement

1. At the outset, it must be pointed out that Calhoun has not identified who it is, or why this proceeding impacts its interests. According to the Commission's public records, Calhoun is not a licensee or permittee of any broadcast station, nor is it an applicant for any new broadcast station. Furthermore, the comments submitted by Calhoun do not offer an ounce of explanation as to why the matters of this proceeding impact Calhoun's interests. Accordingly, it is obvious that

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Calhoun lacks standing to object to the proposed reallocation of Channel 224 from Talladega, Alabama to Munford, Alabama, and the modification of the WTDR-FM license to specify Munford as its community of license.¹

Calhoun's Comments Are Nothing More Than a Collection of Misstatements and Baseless Speculation

Jacobs filed legitimate "fill-in" FM translator applications

2. Calhoun's comments, which resemble a fictional comic book story, paints a picture that Jacobs is conspiring to move WTDR-FM to Anniston, Alabama. Calhoun claims that Jacobs recently submitted FM translator applications to expand the WTDR listening area, and Calhoun submits an engineering study to demonstrate how Jacobs will effectuate its move-in into the Anniston market. While Calhoun's comments might make for interesting reading, all of its analysis is based upon misstatements of fact, mischaracterization of Commission policy, and grade school speculation.

3. To begin with, Calhoun commences its conspiracy theory by pointing out that Jacobs recently submitted six FM translator applications in the Auction No. 83 proceeding. If Calhoun would have carefully looked at each of the Jacobs translator applications it would have found that all six are "fill-in" proposals -- namely, they propose service to an area already within the protected WTDR-FM

¹ Jacobs submits that Calhoun is merely a "stealth" objector, and probably a front for a competing broadcaster that has submitted its comments in an effort to slow down Jacobs' legitimate proposal. The Commission should order Calhoun to identify itself and justify its eligibility to submit comments in this proceeding.

contour. Each of these translator proposals offer service within the WTDR protected contour to an area receiving denigrated WTDR service as a result of terrain shielding or other atmospheric impediments. None of the proposed translator stations would result in an expansion of the WTDR service area. For Calhoun to allege otherwise is simply a reckless abuse of the Commission processes.

**Jacobs' Proposal Complies With §73.207
and Associated Commission Precedent**

4. As Calhoun's fictional story continues, it alleges that the proposal to re-license WTDR-FM to Munford, Alabama does not comply with the Commission's spacing requirements, and also requires the relocation of the WTDR transmitting site to a specific antenna farm that has been conveniently hand-picked by Calhoun. However, as creative and speculative these notions are, they are simply not true.

5. Attached hereto as Exhibit No. 1 is the Technical Statement of R. Stuart Graham, Jr., wherein it is shown once again that Jacobs' proposal complies with §73.207 of the Commission's Rules, and that the grandfathered short-spacing to WAFN-FM complies with the policies associated with pre-1989 "grandfathered" FM stations, as set forth in *Fremont and Holton, Michigan, 14 FCC Rcd 17108 (1999)*.

6. Calhoun seems to imply that Jacobs' reliance on the *Fremont and Holton, Michigan* ruling is proof of wrongdoing. The undersigned counsel was also counsel to the petitioner in *Fremont and Holton, Michigan*, and the matters here are nearly identical. As the Commission so eloquently explained in the Michigan proceeding, the special policy was adopted to allow pre-1989 "grandfathered" stations that were in compliance with the FCC rules when authorized to continue to

be afforded the same opportunity to change their community of license as other stations authorized in conformity with the FCC Rules. Jacobs does not propose any additional or new short-spacing. Accordingly, Jacobs is eligible to pursue the community change to Munford, Alabama.

**Jacobs Will Not Operate WTDR-FM From the
Transmitter Site that Calhoun has Chosen**

7. Jacobs can only assume that Calhoun is in the transmitter site business since Calhoun has taken it upon itself to find a new transmitting site for WTDR-FM. Calhoun has concluded that WTDR-FM will be moving to a specific antenna farm near Anniston. Although Calhoun's "free advice" makes for interesting reading, it is nothing more than speculative creative writing designed to twist a well-engineered proposal into a Harry Potter sequel.

8. Contrary to Calhoun's speculation, Jacobs has no intention of moving WTDR-FM to the WVOK transmitter site. In fact, Jacobs has no intention of moving the WTDR-FM site anywhere -- period. As the attached Technical Statement shows, the 70 dBu contour of WTDR-FM will not reach 30% of the Anniston Urbanized Area. Since the WTDR coverage to the Anniston Urbanized Area is significantly less than 50%, and because the community of Munford is not located within the Anniston Urbanized Area, and no actual site change is proposed for WTDR-FM, Calhoun's demand for a "Tuck Showing" in this proceeding is completely unwarranted.

9. Jacobs acknowledges that WTDR-FM has a presence in portions of the Anniston market as several Anniston area merchants advertise on WTDR-FM, and

WTDR-FM has documented listeners there. Jacobs will continue to pursue such advertising and listener relationships should the community change to Munford be approved, just as Jacobs will continue to pursue its advertising and listener relationships in Talladega. In other words, it will be business as usual for Jacobs should this proceeding be resolved in its favor.

10. The Commission should also take note of the fact that the family of Jim Jacobs, President of Jacobs, owns the WTDR-FM Talladega business office, located at 34915 Alabama Highway 21 in Talladega. This office is -- and will remain -- the primary business office for WTDR-FM once the Commission approves this proposal to re-license WTDR-FM to Munford. Attached hereto as Exhibit No. 2 is a recent email and six photos from Mr. Jacobs -- all of which support the fact that WTDR-FM continues to maintain a full service production facility and business office in Talladega. Finally, it is also worth noting that Jacobs does all of its banking in Talladega, too.²

**Calhoun Should be Cited for
Submitting a Frivolous Pleading**

11. When Calhoun's comments are viewed in its entirety, the only conclusion that can be reached is it that they are nothing more than a blatant

² Calhoun has pointed out that Jacobs has purchased billboard space in Anniston and Oxford. This is true. But, Calhoun conveniently forgot to mention that Jacobs has also purchased billboard space throughout Talladega County, too.

Jacobs has no intention of abandoning Talladega or Talladega County. Should the Commission re-license WTDR-FM to Munford, Jacobs will maintain its primary business office in Talladega, do its banking in Talladega, and continue to broadcast some programming that is responsive to the interests and needs of the Talladega area.

attempt to slow down or block a legitimate technical proposal. Calhoun has mischaracterized six legitimate fill-in FM translator applications filed by Jacobs for WTDR-FM. Calhoun has questioned sound Commission policy with regard to pre-1989 "grandfathered" FM radio stations. And, without any rule or reason, Calhoun has hand-picked a new transmitter site for WTDR-FM to create a fictional scenario to justify a baseless hallucination of broadcast reality. In other words, the only place for Calhoun's comments are in the Commission's trash can.

12. In light of the foregoing, Jacobs reminds the Commission of a 1996 "Public Notice" entitled *Commission Taking Tough Measures Against Frivolous Pleadings (FCC 96-42; released February 9, 1996)* wherein the public was reminded that parties to Commission proceeding and their attorneys must comply with rules that prohibit the filing of frivolous pleadings or pleadings filed for the purpose of delay in proceedings before the Commission or its staff.

13. In this instance we have an unidentified party that has twisted fact with fiction for the sole purpose of delaying a legitimate proposal. The Commission should not tolerate such gamesmanship.

Conclusion

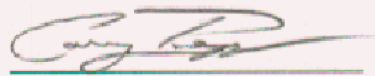
WHEREFORE, the above premises considered, Jacobs respectfully urges the Commission to REJECT the comments submitted by Calhoun and APPROVE the Jacobs proposal to amend § 73.202(b) of the Commission's Rules, FM Table of

Allotments, as follows:

<u>City / State</u>	<u>Existing</u>	<u>Proposed</u>
Talladega, Alabama	224A	---
Munford, Alabama	---	224A

Respectfully submitted,

JACOBS BROADCAST GROUP, INC.

By: 
Cary S. Tepper

Its Attorney

Booth, Freret, Imlay & Tepper, P.C.

7900 Wisconsin Avenue

Suite 304

Bethesda, MD 20814-3628

(301) 718-1818

April 13, 2004

Exhibit No. 1

(Technical Statement of R. Stuart Graham, Jr.)

REPLY TO COMMENTS
MB DOCKET NO. 04-19
JACOBS BROADCASTING GROUP, INC.
WTDR RADIO STATION
MUNFORD, ALABAMA
April 2004

TECHNICAL STATEMENT

1. This statement was prepared on behalf of Jacobs Broadcasting Group, Inc. ("Jacobs"), licensee of FM radio station WTDR, Channel 224A, Talladega, Alabama. Jacobs is the petitioner in MB Docket No. 04-19. Jacobs has requested a community of license change for WTDR from Talladega to Munford, Alabama. This statement is in response to the comments submitted by Calhoun Communications ("CC") during the comment period of MB Docket No. 04-19.

2. CC in its comments claims that the proposed allocation site for Channel 224A at Munford, Alabama, fails to meet the Commission's spacing requirements, due to a shortspace to station WAFN-FM, Channel 224A, Arab, Alabama; that a fully spaced site exists some 9.0 kilometers south-southwest of Talladega (which is too far removed from Munford to place the requisite city grade coverage over the proposed community); that Jacobs has been relocating its transmitter site for WTDR and filed translator applications to provide a "stronger presence" in the Anniston market. It also asked, that if the Commission were to approve the change in community of license, it condition the grant to not allow WTDR to relocate any closer to

Anniston or that the Commission change its policy to not allow stations which have invoked contour protection to change their communities of license. CC claims that Jacobs, using the transmitter site of existing station WVOK, could serve Munford and would provide city grade coverage to the Anniston Urbanized area in excess of 50%.

DISCUSSION

3. As presently licensed (BLH-20010116ABQ), and authorized in the outstanding permit (BPH-20030414ABK), WTDR is as 1989 Class A grandfathered shortspaced station with respect to WAFN-FM in Arab, Alabama. In the application, which ultimately led to the WTDR licensed facility, Jacobs sought, and was granted, an upgrade to a maximum equivalent 6.0 kilowatt Class A facility through a mutual increase of facilities agreement with WAFN-FM, despite the 9.86 kilometer shortspace under §73.207 of the rules. The status of WTDR's grandfathered 1989 rights was not changed as a result of the station's operation as a 6.0 kilowatt equivalent Class A. Further, when Jacobs filed its application to what is now the WTDR permit location, it actually proposed a site which was slightly farther from WAFN-FM, but still grandfathered under §73.213 (c)(1) separations. The proposed change in community of license is based on the use of the licensed WTDR site. As indicated in the Petition for Rule Making, Channel 224A meets the Commission's rules, pursuant to §73.207, with the exception of the grandfathered shortspace to WAFN-FM. The Commission has allowed grandfathered shortspaced stations (both 1964 and 1989) to change communities of license, notwithstanding the grandfathered shortages.¹ The site specified is compliant with the rules and does not need to be changed, as CC indicates.

1) Fremont and Holton, Michigan (MM Docket 98-180:DA 99-2095), released October 8, 1999. Killeen and Cedar Park, Texas (MM Docket 98-176:DA 00-143), released February 2, 2000.

4. WTDR presently provides a predicted 60 dBu signal into the Anniston, Alabama, area. As a result of intervening terrain, coverage in parts of the 60 dBu contour is impacted. Naturally, Jacobs wishes to maximize service to the listening public within the 60 dBu contour of the station. The translator applications that have been submitted by Jacobs are in the area of the 60 dBu and are "fill-in translators" designed to provide service to areas which receive less than the FCC predicted contour.

5. In an assumption of what Jacobs' future plans for WTDR may be, CC's engineering counsel has identified a transmitter site they believe might be used by WTDR. We must assume that CC has a "crystal ball" as to what Jacobs might or would propose. Jacobs has not proposed such a relocation of WTDR and, to assume they would, is not an appropriate prognostication for CC to make. It appears that the "relocation" to the WVOK site was to a site which would provide a greater than 50% coverage of the Anniston Urbanized area by WTDR, in hopes of showing that a study, pursuant to the Richard Tuck petition, is necessary to demonstrate Munford is independent of Anniston. As presently authorized, based on both the licensed and authorized permit of WTDR, the 70 dBu contour of the station does not even reach 30% (much less 50%) of the Anniston Urbanized area, as shown on Exhibit #1.² Since the coverage to the Anniston Urbanized Area is significantly less than 50%, Munford is not located in the Urbanized Area and no actual site change is proposed, further analysis with respect to the Urbanized Area is unwarranted.

2) The licensed WTDR facility covers 13.7% of the Anniston Urbanized Area. The authorized permit provides coverage to 27.4% of the Urbanized Area. The area was calculated using a polar planimeter.

SUMMARY

6. WTDR has proposed to change its city of license from Talladega to Munford. Further, this change of city of license complies with §73.207 (to all but WAFN-FM) and §73.213 (to WAFN-FM) of the Commission's rules from either the WTDR licensed or construction permit site. WTDR is not a contour protected station and, therefore, is eligible for a change in community of license. From either the licensed or permitted site, the requisite 70 dBu (3.16 mV/m) service contour adequately serves the city of Munford. Since the proposed community is outside the Urbanized Area, the coverage to the Urbanized Area is less than 50%, no Tuck analysis is needed. Finally, any condition which would prevent Jabobs from relocating the site for WTDR in the future is unnecessary. Any relocation application can be addressed by CC or any other party at the time it is filed.

7. Should there be any questions concerning the information contained herein, we welcome the opportunity to discuss the matter by phone at 912-638-8028 or by email at stu@grahambrock.com.

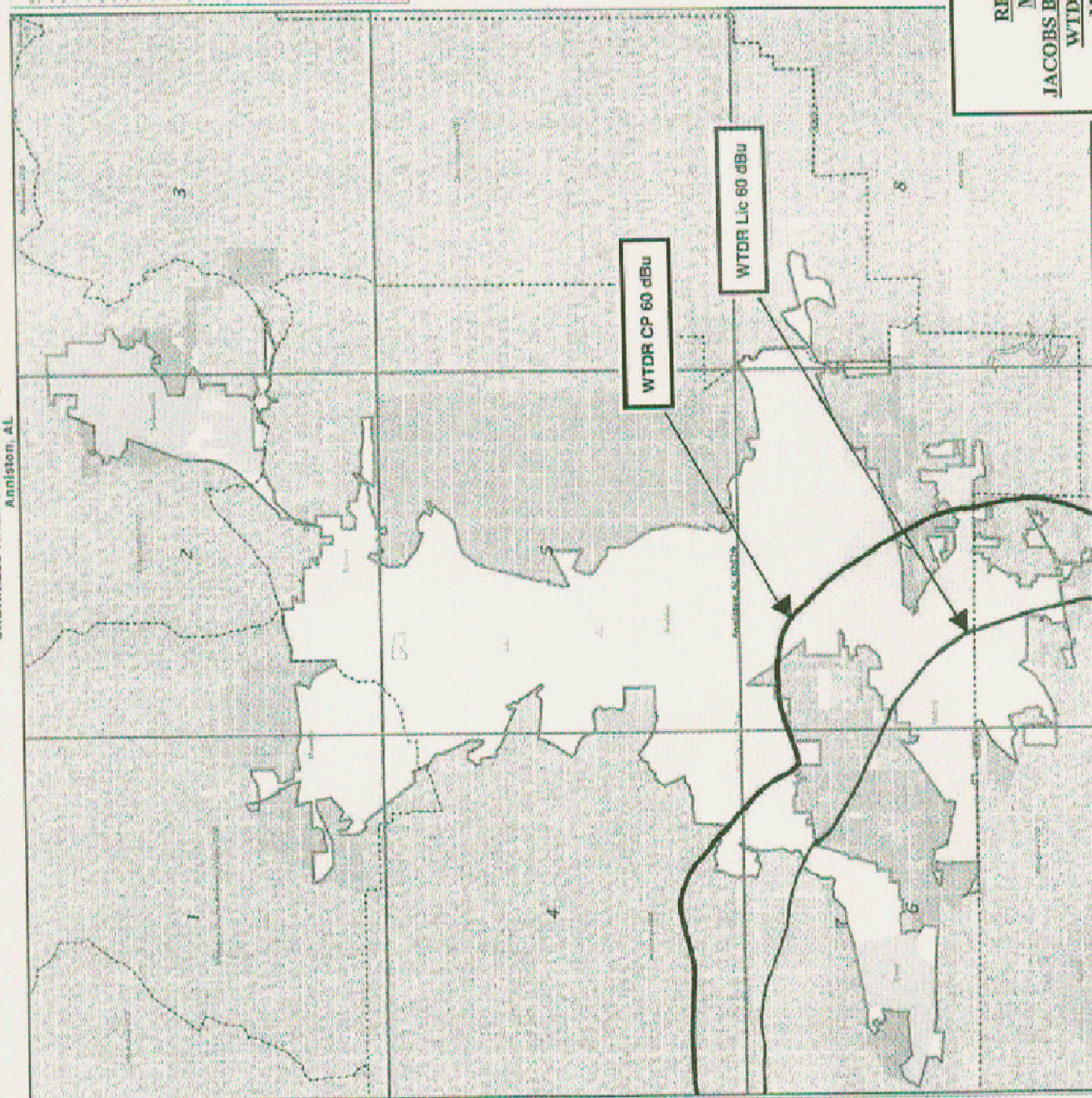
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EXHIBIT #1
REPLY TO COMMENTS
MB DOCKET No. 4-19
JACOBS BROADCASTING GROUP, INC.
WTDR (FM) RADIO STATION
MUNFORD, ALABAMA
April 2004

AFFIDAVIT AND QUALIFICATIONS OF CONSULTANT

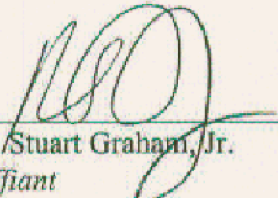
State of Georgia)
St. Simons Island) ss:
County of Glynn)

R. STUART GRAHAM, being duly sworn, deposes and says that he is an officer of Graham Brock, Inc. Graham Brock has been engaged by Jacobs Broadcasting Group, Inc., to prepare the attached Technical Exhibit.

His qualifications are a matter of record before the Federal Communications Commission. He is a graduate of Auburn University and has been active in Broadcast Engineering since 1972.


The attached report was either prepared by him or under his direction and all material and exhibits attached hereto are believed to be true and correct.

This the 2nd day of April, 2004.



R. Stuart Graham, Jr.
Affiant

*Sworn to and subscribed before me
this the 2nd day of April, 2004.*



Notary Public, State of Georgia
My Commission Expires: September 3, 2007

Exhibit No. 2

(Jim Jacobs Email and Talladega Office Photos)

Subj: **WTDR**
Date: 4/11/2004 11:33:22 PM Eastern Standard Time
From: jimj@thunder927.com
To: Tepperlaw@aol.com
File: **image001.zip** (2511375 bytes) DL Time (TCP/IP): < 1 minute
Sent from the Internet (Details)

Cary:

Attached is a Word document that has six photos and descriptions from our Talladega facility. I think once you see them for yourself, you will clearly see this is not a radio station that is shutting down one building just to move into another. Our stuff is first class.....at both locations.

Other than adding this, I think you should go ahead and file the response

Jim Jacobs

President & General Manager

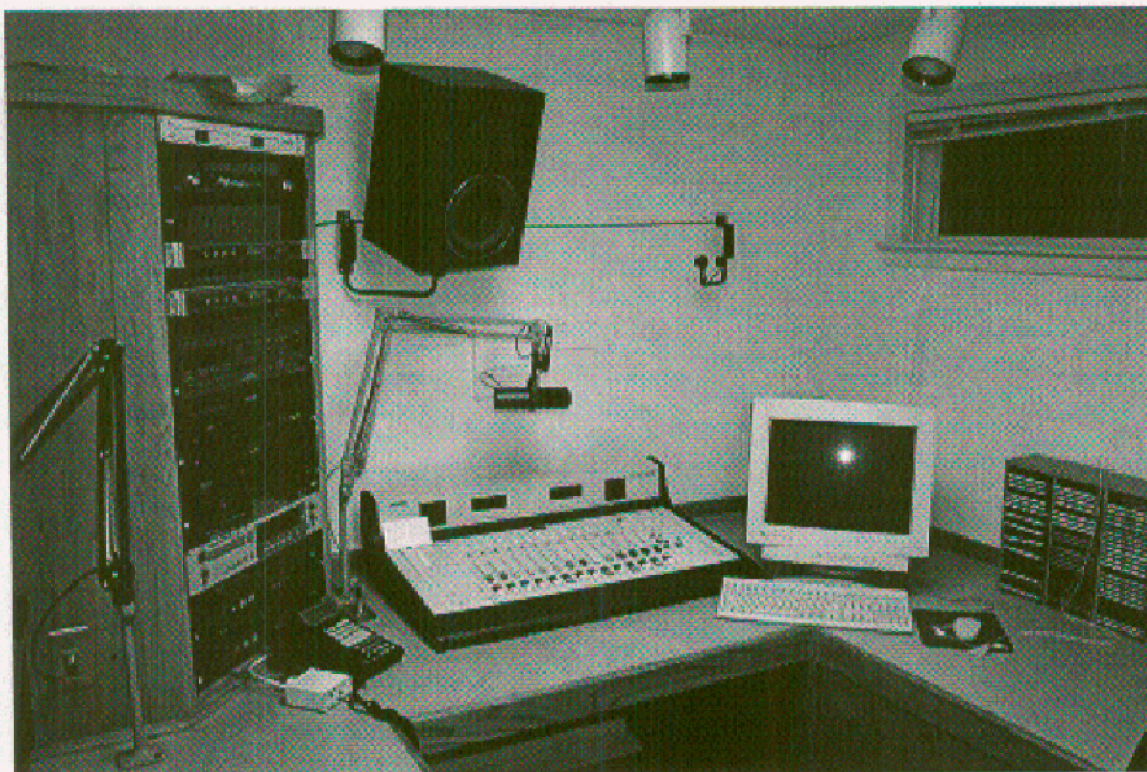
JACOBS BROADCAST GROUP, INC.

WTDR-FM / Thunder 92.7

My Oxford Office:
Phone 256-741-6010
Fax 256-741-6031
1913 Barry Street
Oxford, AL 36203

My Talladega Office:
Phone 256-315-5910
Fax 256-315-5931
P. O. Drawer 329
Talladega, AL 35161

Visit Us Online At:
<http://www.thunder927.com/>



WTDR, Talladega Production Studio



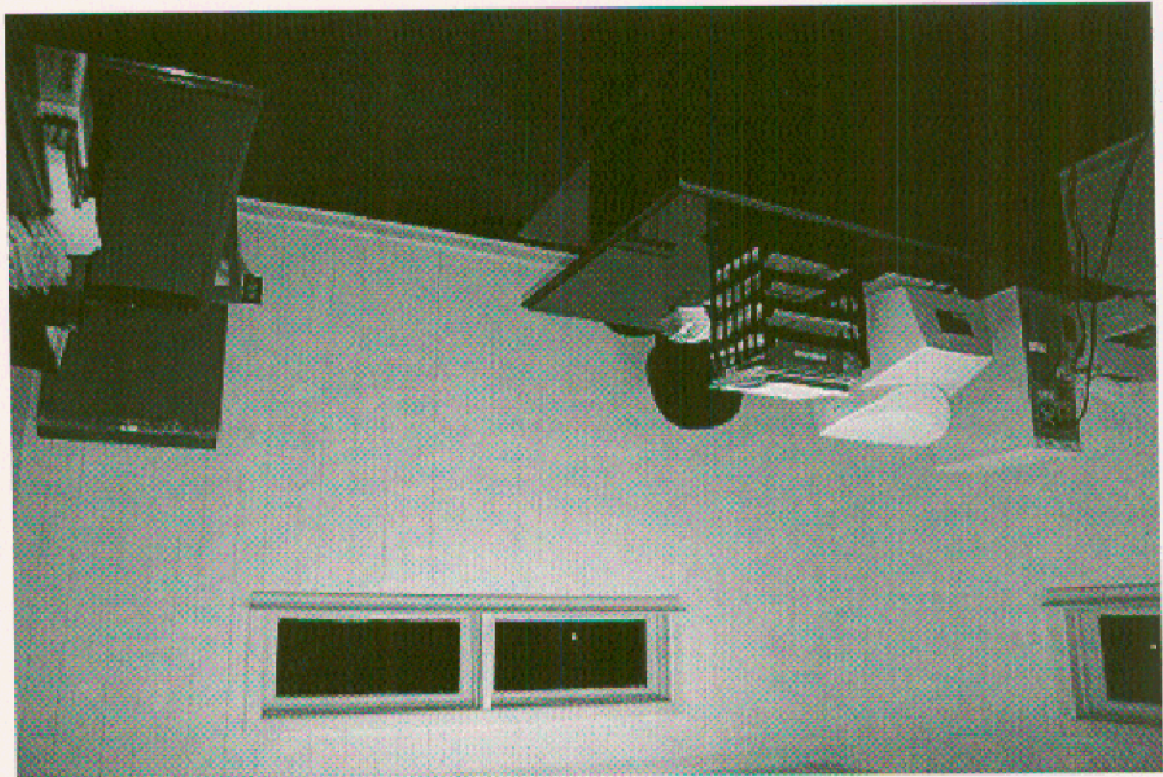
WTDR, Talladega Production Studio B



WTDR, Talladega Main On-Air Studio

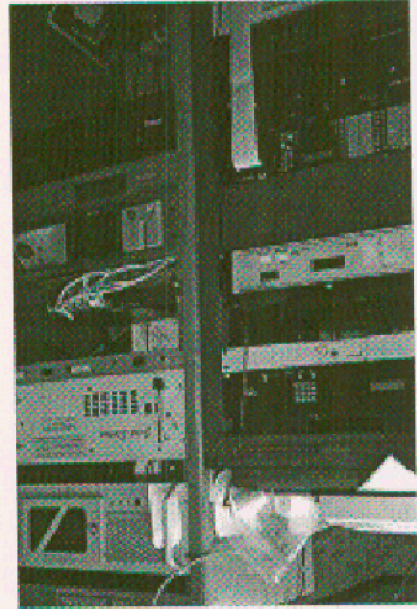


WTDR, Talladega Offices & Studios – Advertising Sales Office



WTDR, Talladega Studios & Offices – Local Sales Manager's Office

WTDR, Talladega Studios – Rack Room –
complete with Transmitter Remote Control Unit,
EAS System, Optomod & STL, all active 24/7

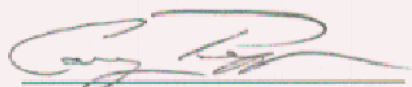


CERTIFICATE OF SERVICE

I, Cary S. Tepper, Esquire, hereby certify that on this 13th day of April, 2004, I have served a copy of the foregoing "**Reply Comments**" first-class, postage-prepaid, on the following:

*John A. Karousos
Chief, Allocations Branch
Federal Communications Commission
445 12th Street, S.W.; Room 3-A266
Washington, D.C. 20554

Howard M. Weiss
Fletcher, Heald & Hildreth, PLC
1300 N. 17th Street
11th Floor
Arlington, VA 22209-3801
(Counsel to Calhoun Communications)

A handwritten signature in black ink, appearing to read 'Cary S. Tepper', is written over a horizontal line.

Cary S. Tepper, Esq.

*/ indicates delivery by hand